

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 118 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIKHUBHAI NAGBHAI

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M SHAH for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
M/S PATEL ADVOCATES for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/01/97

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the order dated August 31, 19984 passed by the State Government purporting to act under the provisions of sub-section (2) of Section 5 of the

Saurashtra Estates Acquisition Act, 1952 (hereinafter referred to as the Act).

The facts giving rise to the present petition briefly stated, are that the petitioner claims to have purchased, by a registered sale-deed dated May 5.1980, land being survey no.37 (part) admeasuring 12 acres 7 gunthas and survey no.38 (part) admeasuring 7 acres 33 gunthas from Rameshchandra Trambakrai Munshi and others (hereinafter referred to as the Vendors). The lands are situated in village Khakharia, taluka Vadia, District Amreli. According to the petitioner, when he approached the concerned revenue official for mutating his name in the revenue record in respect of the aforesaid lands, the petitioner was told that it was necessary for the petitioner to obtain sanction/permission of the Collector for the sale of the said lands in his favour under the provisions of the aforesaid Act, as the lands were earlier granted to the Vendors- Barkhalidars subject to the condition that they shall not be sold without prior permission of the Collector. The petitioner, therefore, made application to the Collector, Amreli for the grant of sanction for the said sale. According to the petitioner, the Collector did not decide the said application and forwarded the same to the State Government and without giving any opportunity of hearing either to the petitioner or the Vendors-who were Barkhalidars, the State Government passed the impugned Notification dated August 31, 1984 purporting to acquire the said lands and to declare that with effect on and from the date of publication of the notification in the official gazette, all the rights, title and interests of the said Barkhalidar in respect of the said lands shall vest and shall be deemed to have been vested with all rights in or over the same appertaining thereto, and all rights held by the said Barkhalidars in the said land shall be deemed to have been extinguished. The said notification is produced at Annexure B to the petition. Consequent thereto the Mamlatdar, Vadia, issued notice dated January 1, 1985 calling upon the petitioner to hand over the possession of the aforesaid parcels of land.

The aforesaid notification dated August 31, 1984 and the notice dated January 1, 1985 are challenged in the present petition. While entertaining and admitting this petition, this Court had granted interim stay of the impugned notification.

On behalf of respondent no.2 Affidavit-in-reply has been filed for resisting the petition. At the hearing of the petition, Mr.Mehul S.Shah, learned Advocate

for the petitioner submitted that the impugned order dated August 31, 1984 is passed by the State Government without giving any notice or opportunity of hearing to the petitioner or to his Vendors who were Barkhalidars in respect of the lands in question. The Barkhalidars were already granted permission for sale of Survey Nos. 37 and 38 in favour of Sonalben and Sakarben and therefore, sale in favour of the petitioner was not void ab initio. It is further submitted on behalf of the petitioner that the provisions of the said Act were not applicable to the lands in question in view of the fact that the lands in question were bid lands allotted to the petitioner's vendors for personal cultivation and therefore, the provisions of the Act were not at all applicable.

In the alternative, it was submitted that even if the Collector's permission was required for purchase of the aforesaid land, the petitioner had already submitted his application but the Collector did not decide the said application, but forwarded the papers to the State Government for forfeiting the lands in question.

On behalf of the respondents it was contended by Mr.M.R.Raval,learned Asstt. Government Pleader that the petitioner was already given hearing by the Collector on November 23, 1981 and therefore, it was not necessary to give any further hearing. As far as the other contentions are concerned, Mr.Raval submitted that they were mixed questions of law and facts and that there was no material on record for deciding the said contentions. Mr.Raval also submitted that the petitioner was estopped from raising any such contention as the petitioner himself had submitted an application for sanction to the Collector.

Having heard the learned Advocates for the parties, I am of the view that without going into the rival contentions of the parties on merits, the petition deserves to be allowed on the short ground that the impugned Notification dated August 31, 1984 (Annexure B) was passed by the State Government without giving the petitioner or his Vendors any show cause notice or opportunity of being heard. It is true that according to the respondents, the petitioner was given hearing by the Collector. However, since the impugned order was passed by the State Government, the petitioner was required to be given an opportunity of being heard by the State Government. The order is in purported exercise of the powers conferred by the provision of sub-section (2) of section 5 of the Act, which are provisions of drastic nature. It is required to be noted in this connection

that Barkhalidars had already obtained permission of the collector for the sale of the said lands and other lands to Sonalben and Sakarben. The Collector had granted such permission and the Barkhalidar has sold substantial portions of survey no. 37 and 38 to Sonalben and Sakarben. However, only the remaining portions of survey nos. 37 and 38 were sold by the Barkhalidars to the petitioner. Mr. Shah learned Advocate for the petitioner, therefore, vehemently contended that since the Collector was already satisfied about the need of Barkhalidars to dispose of the land in question, the permission sought for by the petitioner was merely for the change of the name of the purchaser/s in respect of two parcels of land. Moreover, according to the petitioner, he is an agriculturist and the provisions of the Act do not put any embargo against any such sale. The State Government could not have purported to exercise the powers under sub-section (2) of Section 5 of the Act.

In view of the fact that I am inclined to set aside the order of the State Government merely on the ground of breach of principles of natural justice, I am not expressing any opinion on the merits of the case.

In view of the aforesaid discussion the impugned notification dated August 31, 1984 (Annexure B) and the notice dated January 1, 1985 (Annexure C) are hereby quashed and set aside. It will be open to the State Government to take further action in accordance with law after giving all the affected parties including the petitioner an opportunity of being heard.

Rule is made absolute accordingly with no order as to cost.

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